



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011-0318]

Alabama Metal Coil Securement Act; Petition for Determination of Preemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of Petition for Determination of Preemption; request for comments.

SUMMARY: FMCSA requests comments on a petition submitted by the American Trucking Associations (ATA) requesting a determination that the State of Alabama’s Metal Coil Securement Act is preempted by Federal law. FMCSA requests comments on what effect, if any, Alabama’s metal coil load securement certification requirements may have on interstate commerce.

DATES: Comments are due on or before [INSERT DATE 60 DAYS FROM PUBLICATION].

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. To allow effective public participation before the comment deadlines, however, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments. Do not submit the same comments by more than one method.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Refer to the Privacy Act heading on <http://www.regulations.gov> for further information.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the “help” section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in this docket. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. FMCSA will continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-7056. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background

The Metal Coil Securement Act

Alabama's Metal Coil Securement Act (the Act), enacted in 2009, prohibits a motor carrier from transporting metal coils in a movement that originates or terminates in Alabama unless the driver is certified in load securement (Ala. Code § 32-9A-2(a)(4)a.). The law, as originally enacted, also required the driver to carry a copy of the certification in the vehicle and produce it upon demand (Ala. Code § 32-9A-2(a)(4)b.). Maximum penalties for violating these requirements include fines of between \$5,000 and \$10,000, jail time and/or a court order prohibiting the driver from operating a commercial motor vehicle (CMV) in the State (Ala. Code § 32-9A-4(d) – (g)). Alabama Promulgated Rule No. 760-X-1-16, adopted on April 5, 2011, offers CMV drivers three options to become certified in load securement: (1) obtain a Metal Coil Certificate by taking and passing the "Securing Metal Coils Course" available for \$25.00 on the web site, www.metalcoiltraining.com; (2) obtain a commercial driver's license (CDL) endorsement that allows the driver to haul metal coils in the issuing State; or (3) obtain a Metal Coil Certificate from a motor carrier authorized by the Alabama Department of Public Safety (ADPS) to issue the Certificate, which would require the carrier's safety compliance officer to submit a notarized affidavit that he/she has personal knowledge that the carrier requires every

driver to be trained in the requirements of 49 CFR § 393.120 before hauling metal coils. Federal regulations for securing metal coil loads, codified in 49 CFR § 393.120, do not require any such driver certification.

In June 2011, Alabama amended the Act, rescinding the requirement that drivers carry copies of their metal coil load securement certification in their vehicles. Currently, the Act continues to require drivers to obtain certification, as specified in Alabama Promulgated Rule No. 760-X-1-.16, but drivers are no longer required to produce the certification upon demand.

FMCSA and ATA responses

On June 26, 2009, FMCSA sent a letter to then-Governor Bob Riley of Alabama stating that the Act appeared to be incompatible with the requirements of FMCSA's Motor Carrier Safety Assistance Program. FMCSA also drew attention to two Federal laws authorizing preemption of State legislation (49 U.S.C. §§ 14506 and 31141) and indicated that they might be applicable. The Agency urged State officials to work together with FMCSA officials to resolve any conflict between State and Federal law. Governor Riley responded on August 26, 2009, explaining that the Act was adopted in response to a number of accidents in Alabama involving the transport of metal coils. Governor Riley took the position that Alabama's metal coil load securement certification requirements were not preempted by Federal law.

On December 22, 2010, ATA petitioned FMCSA for a determination that Alabama's metal coil load securement certification requirements and penalties create an unreasonable burden on interstate commerce and are preempted under 49 U.S.C. § 31141. ATA contends that Alabama's requirement that drivers obtain certification in metal coil load securement is more stringent than and incompatible with Federal metal coil safety regulations.

In its December 22, 2010 letter, ATA also requested a determination that the requirement that the driver carry the certification and display it upon demand is preempted by 49 U.S.C. § 14506. The recent amendment to the Act, however, removed this requirement, rendering ATA's request moot. As a result, FMCSA does not address this issue.

By letter dated January 25, 2011, the ADPS responded to ATA's petition. ADPS acknowledged that the requirements of the Act are more stringent than Federal regulations, but stated that the requirements should not be preempted because they have safety benefits and do not place an unreasonable burden on interstate commerce.

Applicable law

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) has the same effect as a regulation prescribed under 49 U.S.C. § 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations (FMCSRs); (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation (49 U.S.C. § 31141(c)(1)). If the Secretary determines that a State law or regulation has the same effect as a regulation based on § 31136, it may be enforced (49 U.S.C. § 31141(c)(2)). A State law or regulation that is less stringent may not be enforced (49 U.S.C. § 31141(c)(3)). And a State law or regulation the Secretary determines to be additional to or more stringent than a regulation based on § 31136 may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce (49 U.S.C. § 31141(c)(4)). To determine whether a State law or regulation

will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce (49 U.S.C. § 31141(c)(5)). The Secretary's authority under § 31141 is delegated to the FMCSA Administrator by 49 CFR 1.73(g).

Request for Comments

Although preemption under § 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comment on what effect, if any, Alabama's metal coil load securement certification requirement has on interstate motor carrier operations. Commenters are also encouraged to submit information on similar requirements imposed by States other than Alabama. In requesting comments, FMCSA does not seek legal conclusions. FMCSA also seeks information on the safety, economic, and operational effects, including cumulative effects, of Alabama's and other States' requirements. FMCSA requests commenters to limit their submissions to these issues and to submit data supporting their positions. The Agency has placed in the docket for inspection: FMCSA's June 26, 2009 letter, Governor Riley's August 26, 2009 reply, ATA's December 22, 2010 petition, ADPS's January 25, 2011 response, the Alabama Metal Securement Act, the ADPS April 5, 2011 rule implementing the Metal Coil Securement Act, and the June 2011 amendments to the Metal Coil Securement Act.

Issued on: November 2, 2011

Anne S. Ferro
Administrator

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